Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

FRACHT FWO AG,

Petitioner,

v.

LCI SHIPHOLDINGS, INC., for itself and as the successor-in-interest to Forest Lines, Inc.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The questions addressed in the Fifth Circuit's opinion involve more far-reaching considerations than the narrow confines of the dispute between Fracht AWO AG (Fracht) and LCI Shipholdings (LCI) over a fixed cost freight forwarder's entitlement to tort-based equitable indemnity. Instead, those questions involve a bedrock concept of federal or general maritime law[1] — equitable indemnity based in tort. And this is a principle of law that repeatedly arises in a significant percentage of maritime cases. Yet the criterion for equitable indemnity under federal maritime law has not been directly addressed by this Court; whereas the federal appellate and district courts have failed to establish a consistent, readily identifiable and easily applied standard, instead adopting a hodge-podge of conflicting and often ineluctable rules that clash with one another. Accordingly, the uniformity of federal maritime law warrants a grant of certiorari to decide these questions:

1. For the sake of uniformity of federal maritime law, should the legal criterion for the creation of a duty to indemnify be the clearly-stated and easily-applied rule articulated in § 96 of the Restatement of the Law of Restitution instead of the vague, overly abstract and elusive criteria articulated by the Fifth Circuit in this case and the equally vague and inconsistent criteria espoused by some of the other circuit courts of appeal in the United States.

2. Is a fixed cost freight forwarder, which is without fault but nevertheless has been held liable to the insurer of the owner of cargo damaged by virtue of the ocean carrier's failure to properly care for the cargo, entitled to tort-based

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1. The terms "federal maritime law" and "general maritime law" are used interchangeably in the jurisprudence as embracing the same concept.

equitable indemnification from the shipowner-carrier for the amount of damages paid by the freight forwarder to the subrogated insurer.

3. Is the duty of care articulated in *Federal Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404 (1969), which formed the basis for a tort cause of action for reimbursement (in contradistinction to indemnification), broad enough in concept and scope to impose on a shipowner/carrier the obligation to reimburse the fixed cost freight forwarder for amounts paid to the cargo owner as the result of liability attributed by statute to the fixed cost freight forwarder by virtue of the shipowner's breach of its carrier duty to care for the cargo.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner, Fracht FWO AG, is wholly-owned by Fracht AG, a Swiss corporation. No publicly-held company owns 10% or more of the stock of Fracht AG.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Rule 29.6 Corporate Disclosure Statement iii

Table of Contents iv

Table of Cited Authorities vi

Table of Appendices xi

Opinions Below 1

Jurisdiction 1

Statement of the Case 1

1. Operative Facts 1

2. Trial Court Proceedings 2

3. Appellate Proceedings 3

Reasons for Granting the Petition 4

1. The Fracht Decision Conflicts with Decisions of Other United States Courts of Appeal Which in Turn Lack Consistency Among Themselves 5

Contents

		Page
2.	The Fifth Circuit's Fracht Decision Decided an Important Question of Federal Maritime Law That Has Not Been Directly Addressed by the Supreme Court	14
3.	The Fifth Circuit's Tort-Based Equitable Indemnity Rule Departs from Mainstream Legal Principles	16
4.	Need for a Rule that Promotes Certainty and Affords Relative Ease of Application	24
5.	The Uniformity Principle of Federal Maritime Law Warrants Review to Formulate a Rule for Ascertaining the Availability of Equitable Tort Indemnity	26
Conclusion		27

TABLE OF CITED AUTHORITIES

Page

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Boykin v. China Steel Corp., 73 F.3d 539 (4th Cir. 1996) 6

Cities Service Co. v. Lee-Vac, Ltd., 761 F.2d 238 (5th Cir. 1985) ..... *passim*

Consolidated Grain & Barge Co. v. American Barge and Towing Co., 766 F. Supp. 754 (E. D. Mo. 1991) 13

Cooper Stevedoring Co. v. Fritz-Kopke, Inc., 417 U.S. 106 (1974) 14

Danny's Construction Co. v. Havens Steel Co., 437 F. Supp. 91 (D. Neb. 1977) 11

East River S.S. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986) 23

Executive Jet Aviation, Inc. v. City of Cleveland, 409 U.S. 249 (1972) 26

Federal Marine Terminals, Inc. v. Burnside Shipping Co., 394 U.S. 404 (1969) ..... *passim*

Garbincius v. Boston Edison Co., 621 F.2d 1171 (1st Cir. 1980) 10

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Page

Great American Insurance Co. v. United States, 575 F.2d 1031 (2d Cir. 1978) 8, 9

Green v. Vermillion Corp., 144 F.3d 332 (5th Cir. 1998) 26

Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1952) 14

Hydro-Air Equipment, Inc. v. Hyatt Corp., 852 F.2d 403 (9th Cir. 1988) 13, 18

Jansson v. Swedish America Line, 185 F.2d 212 (1st Cir. 1950) 27

Jordan v. Madison Leasing Co., 596 F. Supp. 707 (S.D.N.Y. 1984) 10

Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959) 13, 15, 27

Longport Ocean Plaza Condominium, Inc. v. Robert Cato & Associates, Inc., 2002 WL 2013925 (E.D. Pa.) 9, 10

M & O Marine, Inc. v. Marquette Co., 730 F.2d 133 (3d Cir. 1984) 6

Marastro Compania Naviera, S.A. v. Canadian Maritime Carriers, Ltd., 959 F.2d 49 (5th Cir. 1992) 23-24

Cited Authorities

Page

McDermott, Inc. v. Amclyde and River Don Castings, Ltd., 511 U.S. 202 (1994) 14

Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970) 15, 27

Nichimen Co. v. M/V Farland, 462 F.2d 319 (2nd Cir. 1972) 6, 20

Pan-Alaska Fisheries, Inc. v. Marine Construction & Design Co., 565 F.2d 1129 (9th Cir. 1977) ... 24

Prosky v. National Acme Co., 404 F. Supp. 852 (E.D. Mich. 1975) 8, 9

SPM Corp. v. M/V Ming Moon, 22 F.3d 523 (3rd Cir.1994) 12

Savoie v. Loffland Brothers Co., 627 F.2d 722 (5th Cir. 1980) 13, 22

State of Louisiana v. M/V Testbank, 752 F.2d 1019 (5th Cir. 1985) 25

The Harrisburg, 119 U.S. 199 (1886) 15

The Lottawanna, 21 Wall. 558, 22 L. Ed. 654 (1875) 27

The Tungus, 358 U.S. 588 (1959) 15

Cited Authorities

Page

United States v. Reliable Transfer Co., 421 U.S. 397 (1970) 19

Vaughn v. Farrel Lines, Inc., 937 F.2d 953 (4th Cir. 1991) 6, 27

Vickers v. Chiles Drilling Co., 822 F.2d 535 (5th Cir. 1987) 23

Wallenius Bremen G.m.b.H. v. U.S., 409 F.2d 994 (4th Cir. 1969) 10

White v. Johns-Manville Corp., 662 F.2d 243, 249 (4th Cir. 1981) 6, 7, 11

Woods Hole, Martha's Vineyard, Nantucket Steamship Authority v. New England Telephone Co., 693 F.2d 1 (1st Cir. 1982) 7, 8

Zapico v. Bucyrus-Erie Co., 579 F.2d 714 (2d Cir. 1978) 7, 12

STATUTES:

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1333 26

46 U.S.C. §1304(5) 2

Cited Authorities

Page

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RESTATEMENT OF THE LAW OF RESTITUTION §96 .....*passim*

W. PROSSER, THE LAW OF TORTS §51 (4th ed. 1971) ... 19, 20

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Fifth Circuit Filed November 4, 2005 ..... 1a

Appendix B — Order And Reasons Of The United States District Court For The Eastern District Of Louisiana Filed July 19, 2004 ..... 9a

Appendix C — Order Of The United States Court Of Appeals For The Fifth Circuit Denying Petition For Rehearing Filed December 6, 2005 ..... 19a